

**COMMONWEALTH OF KENTUCKY  
NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
FILE NO. BFA-23895-037 and BFA-24058-037  
PERMIT NO. 889-0079  
NONCOMPLIANCE NOS. 110211 and 110363  
FAILURE TO ABATE CESSATION ORDER NOS. 010767 and 010772**

NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET,

PLAINTIFF

VS.

**FINAL ORDER**

FRIENDSHIP ENERGY, INC.,

DEFENDANT

\* \* \* \* \*

THIS MATTER being before the Secretary upon the Report and Recommended Order of Janet C. Thompson, Hearing Officer, and the Secretary having considered said Report and Recommendation, and any exceptions and responses filed thereto, and being sufficiently advised,

**IT IS HEREBY ORDERED AND ADJUDGED** as follows:

1. The Hearing Officer's Report and Recommended Order filed in the Record on [10/8/99], 1999, is ADOPTED and incorporated by reference herein.
2. That Defendant, Friendship Energy, Inc., has WAIVED all rights to an administrative hearing;
3. That Defendant, Friendship Energy, Inc., failed to abate the violations cited in Non-compliance Nos. 110211 and 110363 and Cessation Order Nos. 010767 and 010772;

4. That Defendant, Friendship Energy, Inc., is unable to continue to comply with the requirements of law and the conditions of the Permit;

5. That Defendant, Friendship Energy, Inc., has abandoned its operations under Permit No. 889-0079;

6. That Permit No. 889-0079 is REVOKED;

7. That Defendant, Friendship Energy, Inc., is declared INELIGIBLE to receive another permit or begin another operation until such time as the provisions of KRS 350.130 have been satisfied and met; and

8. That Defendant, Friendship Energy, Inc., is ORDERED to perform all remedial measures necessary to abate the subject violations and to achieve the approved post-mining land use under Permit No. 889-0079.

9. This is a FINAL ORDER.

ENTERED THIS \_\_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
//S// 11/9/99  
JAMES E. BICKFORD, SECRETARY  
NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET

#### **APPEAL RIGHTS**

**In accordance with the provisions of KRS 350.0305 and KRS 350.032, any person or party aggrieved by a Final Order of the Secretary resulting from a hearing may obtain a review of the Final Order by filing in Circuit Court a petition for Review. Such Petition must be filed within thirty (30) days after the entry or rendition of the Final Order, and a copy of the Petition must be served upon the Cabinet.**

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing FINAL ORDER was, on this \_\_\_\_\_ day of \_\_\_\_\_, 1999, mailed by first-class mail, postage prepaid to:

FRIENDSHIP ENERGY, INC.  
PO BOX 836  
GREENVILLE, KY 42345

And hand-delivered to:

S. BRADFORD SMOCK  
Natural Resources and  
Environmental Protection Cabinet  
Office of Legal Services  
Fifth Floor, Capital Plaza Tower  
Frankfort, KY 40601

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NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET,

PLAINTIFF

VS.      **HEARING OFFICER'S REPORT AND RECOMMENDED ORDER**

FRIENDSHIP ENERGY, INC.,

DEFENDANT

\* \* \* \* \*

Pursuant to order of the Hearing Officer dated July 28, 1999, a show cause hearing was held on August 25, 1999. The Cabinet was represented by S. Bradford Smock. No appearances were made on behalf of the Defendant, Friendship Energy, Inc. Based upon the record of this matter, the Hearing Officer hereby makes the following Findings and Recommendations:

**I. FINDINGS OF FACT**

1. The Cabinet issued to Friendship Energy, Inc., Permit No. 889-0079 on November 22, 1994.
2. A representative of the Cabinet issued to Friendship Energy, Inc., Non-compliance No. 110211 on August 21, 1997, and Cessation Order No. 010767 on November 24, 1997.

3. A proposed penalty assessment was sent to Defendant, Friendship Energy, Inc., on January 22, 1998, and received on January 26, 1998, regarding Non-compliance No. 110211 and Cessation Order No. 010676.

4. Defendant, Friendship Energy, Inc., failed to request a formal hearing to contest the violations contained in Non-compliance No. 110211 and Cessation Order No. 010767 and the penalty assessed thereon.

5. A Final Order of the Secretary was entered on March 16, 1998, in which the violations were deemed admitted; a civil penalty of fifty-two thousand five hundred dollars (\$52,500) was assessed and ordered paid within thirty (30) days; and Friendship Energy, Inc., was ordered to perform all remedial measures specified in Non-compliance No. 110211 and Cessation Order No. 010767.

6. A representative of the Cabinet issued to Friendship Energy, Inc., Non-compliance No. 110363 on March 9, 1998, and Cessation Order No. 010772 on April 9, 1998.

7. A proposed penalty assessment was sent to Defendant, Friendship Energy, Inc., on June 2, 1998, and received on June 8, 1998, regarding Non-compliance No. 110363 and Cessation Order No. 010772.

8. Defendant, Friendship Energy, Inc., failed to request a formal hearing to contest the violations contained in Non-compliance No. 110363 and Cessation Order No. 010772 and the penalty assessed thereon.

9. A Final Order of the Secretary was entered on August 3, 1998, in which the violations were deemed admitted; a civil penalty of forty-six thousand eighty dollars (\$46,080) was assessed and ordered paid within thirty (30) days; and Friendship Energy,

Inc., was ordered to perform all remedial measures specified in Non-compliance No. 110363 and Cessation Order No.010772.

10. The violations cited in Noncompliance Nos. 110211 and 110363, and Cessation Order Nos. 010767 and 010772 remained unabated and the Cabinet filed its Administrative Complaint on May 28, 1999.

11. The Administrative Complaint was properly served on Defendant, Friendship Energy, Inc., at its permanent permit address.

12. Defendant, Friendship Energy, Inc., did not file an Answer to the Administrative Complaint, nor did it appear or defend in this proceeding in any way.

13. A prehearing conference was held on July 26, 1999. The Cabinet was represented by S. Bradford Smock. No appearances were made on behalf of Defendant, Friendship Energy, Inc. The Defendant was ordered to appear at a show cause hearing on August 25, 1999.

14. A show cause hearing was held on August 25, 1999. The Cabinet was represented by S. Bradford Smock. No appearances were made on behalf of Defendant, Friendship Energy, Inc. The Cabinet orally moved for a default judgment granting the relief sought in the Administrative Complaint.

## **II. CONCLUSIONS OF LAW/RECOMMENDATIONS**

15. Pursuant to 405 KAR 7:092, Section 5(5), if the order to show cause is not satisfied as required, the Hearing Officer shall recommend to the Secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint. The Defendant, Friendship Energy, Inc., has failed to demonstrate why a

Secretary's Order adverse to its interests should not be entered pursuant to the applicable regulation.

16. The Plaintiff's motion for default judgement should be granted.

17. Based on the foregoing, I recommend that the Secretary grant the relief sought by the Cabinet in its Administrative Complaint and enter a Final Order determining:

(a) That Friendship Energy, Inc., has WAIVED all rights to an administrative hearing;

(b) That Friendship Energy, Inc., failed to abate the violations cited in Non-compliance Nos. 110211 and 110363, and Cessation Order Nos. 010767 and 010772;

(c) That Friendship Energy, Inc., is unable to continue to comply with the requirements of law and the conditions of the Permit;

(d) That Friendship Energy, Inc., has abandoned its operations under Permit No. 889-0079;

(e) That Permit No. 889-0079 is REVOKED;

(f) That Friendship Energy, Inc., is declared INELIGIBLE to receive another permit or begin another operation until such time as the provisions of KRS 350.130 have been satisfied and met; and

(g) That Friendship Energy, Inc., is ORDERED to perform all remedial measures necessary to abate the subject violations and to achieve the approved post-mining land use in permit No. 889-0079.

### **EXCEPTIONS AND REPLY RIGHTS**

Pursuant to KRS 350.0301 any party may file exceptions to this Report and Recommended Order within fourteen (14) days of service of this Report. A party may file a Response to any Exceptions within twenty-one (21) days of service of this Report. The Secretary will then consider this report, exceptions, reply and recommended order and decide the case.

SO RECOMMENDED this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
//S// 10/8/99

JANET C. THOMPSON  
HEARING OFFICER  
OFFICE OF ADMINISTRATIVE HEARINGS  
35-36 Fountain Place  
Frankfort, Kentucky 40601  
Telephone: (502) 564-7312  
Fax: (502) 564-4973



## **CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing HEARING OFFICER'S REPORT AND RECOMMENDED ORDER was, on this \_\_\_\_\_ day of \_\_\_\_\_, 1999, mailed by first-class mail, postage prepaid to:

FRIENDSHIP ENERGY, INC.  
PO BOX 836  
GREENVILLE, KY 42345

And hand-delivered to:

S. BRADFORD SMOCK  
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Fifth Floor, Capital Plaza Tower  
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